

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

IN RE:	§	
SHARON NOBLE	§	CASE NO. 01-37926-H2-13
DEXTER NOBLE	§	

**ORDER DENYING MOTION TO REINSTATE CASE (doc # 25)**

The Debtors filed this bankruptcy case under chapter 13 of the Bankruptcy Code on July 19, 2001. The trustee filed a motion to dismiss the case primarily because Debtors failed to make timely Chapter 13 Plan payments. At the hearing on August 27, 2002, the Debtors did not appear and the case was dismissed by order entered August 27, 2002.

On September 23, 2002, Debtors filed a motion to reinstate the case, alleging that the Debtors have since tendered sufficient sums to the Trustee to pay the plan current. In the Court's view, facts that occur after dismissal are not grounds for a reinstatement. In fact, the Court is not aware of any explicit provision in the Bankruptcy Code for reinstatement of cases. It is the Court's understanding that reinstatement is a function of obtaining relief from an order of dismissal under Federal Rules of Bankruptcy Procedure rule 9023 and 9024 which adopt rules 59 and 60 of the Federal Rules of Civil Procedure, or else must be a function of Bankruptcy Code § 105.

1. Rule 59 provides for new trial. That rule would appear to be inapplicable in this case.
2. Rule 60 provides for relief from a judgment or order. The requisite grounds are: (i) clerical mistake, (ii) mistake, inadvertence, surprise, or excusable neglect, (iii) newly discovered evidence that could not have been discovered in time to move for a new trial, (iv) fraud, misrepresentation, or other misconduct of an adverse party, (v) the judgment is void, (vi) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it has been based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application, or (vii) any other reason justifying relief from the operation of the judgment. The only one of these that appears potentially applicable, is the last one. However, the Court does not see the chapter 13 bankruptcy process as one in which a debtor initially restructures his debt only periodically to default and then to cure defaults when threatened by dismissal of the case. If the Debtor cannot consummate the restructure that he himself or she herself proposed, the Court does not understand the bankruptcy process to provide five years of continuing supervision of attempts to cure defaults. Therefore, on its face the Court does not see the post-deadline curing of defaults (whether the deadline is a hearing date or monthly plan payments to the Chapter 13 Trustee) as grounds for relief under Rule 60.
3. For similar reasons, the Court does not see a basis to exercise authority under Bankruptcy Code § 105 (assuming that such authority exists) to serve as a federal collection agency during multiple defaults and cures under a chapter 13 plan.

4. There are a number of problems that arise because the concept of reinstatement is so undefined. Therefore, the Court is reluctant to grant relief from an order of dismissal (*e.g.* to reinstate a case after dismissal) except in truly extraordinary circumstances, after proof of entitlement under rule 59 or rule 60 of the Federal Rules of Civil Procedure, and only after careful consideration. Cure of a payment default would generally not be grounds for reinstatement. Illustrative of the kinds of problems that may occur from any other approach are these:
- a. Many of the provisions of the Bankruptcy Code take effect upon commencement of a case. They terminate upon dismissal. It is unclear whether these provisions are resurrected or changed by “reinstatement” of a case.
    - i. Bankruptcy Code § 362(a) effects a stay of creditor action when the petition is filed. The stay terminates upon dismissal of the case (Bankruptcy Code § 362(c)). There is no provision to resurrect the stay upon reinstatement.
    - ii. Bankruptcy Code § 349(b) provides that the dismissal of a case: (i) reinstates receiverships and custodianships, (ii) reinstates avoided transfers, (iii) reinstates voided liens, (iv) reverts property in certain entities. Unless the order of dismissal is abrogated under rules 59 and 60, the effect of this section may make property subject to liens, change deadlines and actions for avoidance of liens, *etc.*
  - b. Although it does not involve issues applicable to a chapter 13 case, the difficulties that arise because of the undefined status of reinstatement are illustrated by *In the Matter of Dunlap, Dunlap v. Sentry*, 217 F.3d 311 (5<sup>th</sup> Cir. 2000).

It is clear that the Debtors did not pay Chapter 13 plan payments as they came due and did not appear in proper prosecution of the case when the Chapter 13 Trustee filed a motion to dismiss. It is clear that Debtor’s failures constitute unreasonable delay that is prejudicial to creditors.

**THEREFORE**, the motion to reinstate is **DENIED**.

SIGNED September 26, 2002.

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WESLEY W. STEEN  
UNITED STATES BANKRUPTCY JUDGE

The Clerk shall serve:  
Debtor  
Debtor’s counsel  
Chapter 13 Trustee  
U.S. Trustee